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***Attorneys for Plaintiff***

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

) Case No.

ABANTE ROOTER AND PLUMBING)

INC, individually and on behalf of all ) **CLASS ACTION**  
others similarly situated, )

Plaintiff, ) OF:

VS.

**1. NEGLIGENCE VIOLATIONS  
OF THE TELEPHONE  
CONSUMER PROTECTION  
ACT [47 U.S.C. §227(b)]**

## MERCHANT DIRECT LLC dba

## 2. WILLFUL VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT [47 U.S.C. §227(b)]

ROYAL PUBLIC FUNDING, and )  
DOES 1 through 10, inclusive, and each )  
of them, )

**3. NEGLIGENCE VIOLATIONS  
OF THE TELEPHONE  
CONSUMER PROTECTION  
ACT [47 U.S.C. §227(c)]**

**Defendant.**

**4. ACT [47 U.S.C. §227(c)]  
WILLFUL VIOLATIONS  
OF THE TELEPHONE  
CONSUMER PROTECTION  
ACT [47 U.S.C. §227(c)]**

## **DEMAND FOR JURY TRIAL**

1 Plaintiff ABANTE ROOTER AND PLUMBING INC (“Plaintiff”),  
2 individually and on behalf of all others similarly situated, alleges the following  
3 upon information and belief based upon personal knowledge:

4 **NATURE OF THE CASE**

5 1. Plaintiff brings this action individually and on behalf of all others  
6 similarly situated seeking damages and any other available legal or equitable  
7 remedies resulting from the illegal actions of MERCHANT DIRECT LLC dba  
8 ROYAL PUBLIC FUNDING (“Defendant”), in negligently, knowingly, and/or  
9 willfully contacting Plaintiff on Plaintiff’s cellular telephone in violation of the  
10 Telephone Consumer Protection Act, *47. U.S.C. § 227 et seq.* (“TCPA”) and related  
11 regulations, specifically the National Do-Not-Call provisions, thereby invading  
12 Plaintiff’s privacy.

13 **JURISDICTION & VENUE**

14 2. Jurisdiction is proper under *28 U.S.C. § 1332(d)(2)* because Plaintiff,  
15 a resident of California, seeks relief on behalf of a Class, which will result in at  
16 least one class member belonging to a different state than that of Defendant, a  
17 Nevada company. Plaintiff also seeks up to \$1,500.00 in damages for each call in  
18 violation of the TCPA, which, when aggregated among a proposed class in the  
19 thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction.  
20 Therefore, both diversity jurisdiction and the damages threshold under the Class  
21 Action Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

22 3. Venue is proper in the United States District Court for the Northern  
23 District of California pursuant to *28 U.S.C. § 1391(b)* and because Defendant does  
24 business within the State of California and Plaintiff resides within the County of  
25 Alameda.

26 **PARTIES**

27 4. Plaintiff, ABANTE ROOTER AND PLUMBING INC (“Plaintiff”),  
28 is a natural person residing in Emeryville, California and is a “person” as defined

by 47 U.S.C. § 153 (39).

5. Defendant, MERCHANT DIRECT LLC dba ROYAL PUBLIC FUNDING (“Defendant”) is an online marketing company, and is a “person” as defined by *47 U.S.C. § 153 (39)*.

6. The above named Defendant, and its subsidiaries and agents, are collectively referred to as "Defendants." The true names and capacities of the Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are currently unknown to Plaintiff, who therefore sues such Defendants by fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the Complaint to reflect the true names and capacities of the DOE Defendants when such identities become known.

7. Plaintiff is informed and believes that at all relevant times, each and every Defendant was acting as an agent and/or employee of each of the other Defendants and was acting within the course and scope of said agency and/or employment with the full knowledge and consent of each of the other Defendants. Plaintiff is informed and believes that each of the acts and/or omissions complained of herein was made known to, and ratified by, each of the other Defendants.

## **FACTUAL ALLEGATIONS**

8. Beginning in or around August 2017, Defendant contacted Plaintiff on Plaintiff's cellular telephone numbers, including but not limited to, ending in -3803, -7210, -5903, -7511, -6147, -1636, and -1080 in an attempt to solicit Plaintiff to purchase Defendant's services.

9. Defendant used an “automatic telephone dialing system” as defined by *47 U.S.C. § 227(a)(1)* to place its call to Plaintiff seeking to solicit its services.

10. Defendant contacted or attempted to contact Plaintiff from telephone numbers, including but not limited to (213) 660-2214, (469) 335-2654, (270) 240-0093, (480) 657-0097, (510) 737-5871, (213) 660-0056, (629) 228-0078, (248)

1 801-9817, (864) 448-1136, (209) 905-5321, (213) 204-5242, and (718) 658-3652  
2 confirmed to be Defendant's numbers.

3 11. Defendant's calls constituted calls that were not for emergency  
4 purposes as defined by *47 U.S.C. § 227(b)(1)(A)*.

5 12. Defendant's calls were placed to telephone number assigned to a  
6 cellular telephone service for which Plaintiff incurs a charge for incoming calls  
7 pursuant to *47 U.S.C. § 227(b)(1)*.

8 13. During all relevant times, Defendant did not possess Plaintiff's "prior  
9 express consent" to receive calls using an automatic telephone dialing system or an  
10 artificial or prerecorded voice on his cellular telephone pursuant to *47 U.S.C. §*  
11 *227(b)(1)(A)*.

12 14. Further, Plaintiff's cellular telephone number ending in -5903, -7511,  
13 -1080 have been on the National Do Not Call Registry well over thirty (30) days  
14 prior to Defendant's initial phone calls.

15 15. Defendant placed multiple calls soliciting its business to Plaintiff on  
16 his cellular telephone ending in -5903 and -7511 in or around August 2017.

17 16. Such calls constitute solicitation calls pursuant to *47 C.F.R. §*  
18 *64.1200(c)(2)* as they were attempts to promote or sell Defendant's services.

19 17. Plaintiff received numerous solicitation calls from Defendant within a  
20 12-month period.

21 18. Defendant continued to call Plaintiff in an attempt to solicit its  
22 services and in violation of the National Do-Not-Call provisions of the TCPA.

23 19. Upon information and belief, and based on Plaintiff's experiences of  
24 being called by Defendant after being on the National Do-Not-Call list for several  
25 years prior to Defendant's initial call, and at all relevant times, Defendant failed to  
26 establish and implement reasonable practices and procedures to effectively prevent  
27 telephone solicitations in violation of the regulations prescribed under *47 U.S.C. §*  
28 *227(c)(5)*.

## **CLASS ALLEGATIONS**

20. Plaintiff brings this action individually and on behalf of all others similarly situated, as a member the two proposed classes (hereafter, jointly, "The Classes").

21. The class concerning the ATDS claim for no prior express consent (hereafter “The ATDS Class”) is defined as follows:

All persons within the United States who received any solicitation/telemarketing telephone calls from Defendant to said person's cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had not previously consented to receiving such calls within the four years prior to the filing of this Complaint

22. The class concerning the National Do-Not-Call violation (hereafter “The DNC Class”) is defined as follows:

All persons within the United States registered on the National Do-Not-Call Registry for at least 30 days, who had not granted Defendant prior express consent nor had a prior established business relationship, who received more than one call made by or on behalf of Defendant that promoted Defendant's products or services, within any twelve-month period, within four years prior to the filing of the complaint.

23. Plaintiff represents, and is a member of, The ATDS Class, consisting of all persons within the United States who received any collection telephone calls from Defendant to said person's cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had not previously not provided their cellular telephone number to Defendant within the four years prior to the filing of this Complaint.

1       24. Plaintiff represents, and is a member of, The DNC Class, consisting  
2 of all persons within the United States registered on the National Do-Not-Call  
3 Registry for at least 30 days, who had not granted Defendant prior express consent  
4 nor had a prior established business relationship, who received more than one call  
5 made by or on behalf of Defendant that promoted Defendant's products or services,  
6 within any twelve-month period, within four years prior to the filing of the  
7 complaint.

8       25. Defendant, its employees and agents are excluded from The Classes.  
9 Plaintiff does not know the number of members in The Classes, but believes the  
10 Classes members number in the thousands, if not more. Thus, this matter should  
11 be certified as a Class Action to assist in the expeditious litigation of the matter.

12      26. The Classes are so numerous that the individual joinder of all of its  
13 members is impractical. While the exact number and identities of The Classes  
14 members are unknown to Plaintiff at this time and can only be ascertained through  
15 appropriate discovery, Plaintiff is informed and believes and thereon alleges that  
16 The Classes includes thousands of members. Plaintiff alleges that The Classes  
17 members may be ascertained by the records maintained by Defendant.

18      27. Plaintiff and members of The ATDS Class were harmed by the acts of  
19 Defendant in at least the following ways: Defendant illegally contacted Plaintiff  
20 and ATDS Class members via their cellular telephones thereby causing Plaintiff  
21 and ATDS Class members to incur certain charges or reduced telephone time for  
22 which Plaintiff and ATDS Class members had previously paid by having to retrieve  
23 or administer messages left by Defendant during those illegal calls, and invading  
24 the privacy of said Plaintiff and ATDS Class members.

25      28. Common questions of fact and law exist as to all members of The  
26 ATDS Class which predominate over any questions affecting only individual  
27 members of The ATDS Class. These common legal and factual questions, which  
28 do not vary between ATDS Class members, and which may be determined without

1 reference to the individual circumstances of any ATDS Class members, include,  
2 but are not limited to, the following:

- 3 a. Whether, within the four years prior to the filing of this  
4 Complaint, Defendant made any telemarketing/solicitation call  
5 (other than a call made for emergency purposes or made with  
6 the prior express consent of the called party) to a ATDS Class  
7 member using any automatic telephone dialing system or any  
8 artificial or prerecorded voice to any telephone number  
9 assigned to a cellular telephone service;
- 10 b. Whether Plaintiff and the ATDS Class members were damaged  
11 thereby, and the extent of damages for such violation; and
- 12 c. Whether Defendant should be enjoined from engaging in such  
13 conduct in the future.

14 29. As a person that received numerous telemarketing/solicitation calls  
15 from Defendant using an automatic telephone dialing system or an artificial or  
16 prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting  
17 claims that are typical of The ATDS Class.

18 30. Plaintiff and members of The DNC Class were harmed by the acts of  
19 Defendant in at least the following ways: Defendant illegally contacted Plaintiff  
20 and DNC Class members via their telephones for solicitation purposes, thereby  
21 invading the privacy of said Plaintiff and the DNC Class members whose telephone  
22 numbers were on the National Do-Not-Call Registry. Plaintiff and the DNC Class  
23 members were damaged thereby.

24 31. Common questions of fact and law exist as to all members of The  
25 DNC Class which predominate over any questions affecting only individual  
26 members of The DNC Class. These common legal and factual questions, which do  
27 not vary between DNC Class members, and which may be determined without  
28 reference to the individual circumstances of any DNC Class members, include, but

1 are not limited to, the following:

- 2 a. Whether, within the four years prior to the filing of this  
3 Complaint, Defendant or its agents placed more than one  
4 solicitation call to the members of the DNC Class whose  
5 telephone numbers were on the National Do-Not-Call Registry  
6 and who had not granted prior express consent to Defendant and  
7 did not have an established business relationship with  
8 Defendant;
- 9 b. Whether Defendant obtained prior express written consent to  
10 place solicitation calls to Plaintiff or the DNC Class members'  
11 telephones;
- 12 c. Whether Plaintiff and the DNC Class member were damaged  
13 thereby, and the extent of damages for such violation; and
- 14 d. Whether Defendant and its agents should be enjoined from  
15 engaging in such conduct in the future.

16 32. As a person that received numerous solicitation calls from Defendant  
17 within a 12-month period, who had not granted Defendant prior express consent  
18 and did not have an established business relationship with Defendant, Plaintiff is  
19 asserting claims that are typical of the DNC Class.

20 33. Plaintiff will fairly and adequately protect the interests of the members  
21 of The Classes. Plaintiff has retained attorneys experienced in the prosecution of  
22 class actions.

23 34. A class action is superior to other available methods of fair and  
24 efficient adjudication of this controversy, since individual litigation of the claims  
25 of all Classes members is impracticable. Even if every Classes member could  
26 afford individual litigation, the court system could not. It would be unduly  
27 burdensome to the courts in which individual litigation of numerous issues would  
28 proceed. Individualized litigation would also present the potential for varying,

inconsistent, or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same complex factual issues. By contrast, the conduct of this action as a class action presents fewer management difficulties, conserves the resources of the parties and of the court system, and protects the rights of each Classes member.

35. The prosecution of separate actions by individual Classes members would create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of the other Classes members not parties to such adjudications or that would substantially impair or impede the ability of such non-party Class members to protect their interests.

36. Defendant has acted or refused to act in respects generally applicable to The Classes, thereby making appropriate final and injunctive relief with regard to the members of the Classes as a whole.

## **FIRST CAUSE OF ACTION**

## **Negligent Violations of the Telephone Consumer Protection Act**

47 U.S.C. §227(b).

## **On Behalf of the ATDS Class**

37. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-36.

38. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular *47 U.S.C. § 227 (b)(1)(A)*.

39. As a result of Defendant's negligent violations of *47 U.S.C. § 227(b)*, Plaintiff and the Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

40. Plaintiff and the ATDS Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

1                   **SECOND CAUSE OF ACTION**

2                   **Knowing and/or Willful Violations of the Telephone Consumer Protection  
3                   Act**

4                   **47 U.S.C. §227(b)**

5                   **On Behalf of the ATDS Class**

6         41. Plaintiff repeats and incorporates by reference into this cause of action  
7         the allegations set forth above at Paragraphs 1-36.

8         42. The foregoing acts and omissions of Defendant constitute numerous  
9         and multiple knowing and/or willful violations of the TCPA, including but not  
10         limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*,  
11         and in particular *47 U.S.C. § 227 (b)(1)(A)*.

12         43. As a result of Defendant's knowing and/or willful violations of *47  
13 U.S.C. § 227(b)*, Plaintiff and the ATDS Class members are entitled an award of  
14         \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C.  
15 § 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

16         44. Plaintiff and the Class members are also entitled to and seek injunctive  
17         relief prohibiting such conduct in the future.

18                   **THIRD CAUSE OF ACTION**

19                   **Negligent Violations of the Telephone Consumer Protection Act**

20                   **47 U.S.C. §227(c)**

21                   **On Behalf of the DNC Class**

22         45. Plaintiff repeats and incorporates by reference into this cause of action  
23         the allegations set forth above at Paragraphs 1-36.

24         46. The foregoing acts and omissions of Defendant constitute numerous  
25         and multiple negligent violations of the TCPA, including but not limited to each  
26         and every one of the above cited provisions of *47 U.S.C. § 227(c)*, and in particular  
27         *47 U.S.C. § 227 (c)(5)*.

28         47. As a result of Defendant's negligent violations of *47 U.S.C. § 227(c)*,

1 Plaintiff and the DNC Class Members are entitled an award of \$500.00 in statutory  
2 damages, for each and every violation, pursuant to *47 U.S.C. § 227(c)(5)(B)*.

3 Plaintiff and the DNC Class members are also entitled to and seek  
4 injunctive relief prohibiting such conduct in the future.

5

6 **FOURTH CAUSE OF ACTION**

7 **Knowing and/or Willful Violations of the Telephone Consumer Protection  
8 Act**

9 **47 U.S.C. §227 et seq.**

10 **On Behalf of the DNC Class**

11 Plaintiff repeats and incorporates by reference into this cause of action  
12 the allegations set forth above at Paragraphs 1-36.

13 The foregoing acts and omissions of Defendant constitute numerous  
14 and multiple knowing and/or willful violations of the TCPA, including but not  
15 limited to each and every one of the above cited provisions of *47 U.S.C. § 227(c)*,  
16 in particular *47 U.S.C. § 227 (c)(5)*.

17 As a result of Defendant's knowing and/or willful violations of *47  
18 U.S.C. § 227(c)*, Plaintiff and the DNC Class members are entitled an award of  
19 \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C.  
20 § 227(c)(5)*.

21 Plaintiff and the DNC Class members are also entitled to and seek  
22 injunctive relief prohibiting such conduct in the future.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff requests judgment against Defendant for the following:

25 **FIRST CAUSE OF ACTION**

26 **Negligent Violations of the Telephone Consumer Protection Act**

27 **47 U.S.C. §227(b)**

28 • As a result of Defendant's negligent violations of *47 U.S.C.*

1 §227(b)(1), Plaintiff and the ATDS Class members are entitled to and  
2 request \$500 in statutory damages, for each and every violation,  
3 pursuant to 47 U.S.C. 227(b)(3)(B).

4 • Any and all other relief that the Court deems just and proper.

5 **SECOND CAUSE OF ACTION**

6 **Knowing and/or Willful Violations of the Telephone Consumer Protection**

7 **Act**

8 **47 U.S.C. §227(b)**

9 • As a result of Defendant's willful and/or knowing violations of 47  
10 U.S.C. §227(b)(1), Plaintiff and the ATDS Class members are  
11 entitled to and request treble damages, as provided by statute, up to  
12 \$1,500, for each and every violation, pursuant to 47 U.S.C.  
13 §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).

14 • Any and all other relief that the Court deems just and proper.

15 **THIRD CAUSE OF ACTION**

16 **Negligent Violations of the Telephone Consumer Protection Act**

17 **47 U.S.C. §227(c)**

18 • As a result of Defendant's negligent violations of 47 U.S.C.  
19 §227(c)(5), Plaintiff and the DNC Class members are entitled to and  
20 request \$500 in statutory damages, for each and every violation,  
21 pursuant to 47 U.S.C. 227(c)(5).

22 • Any and all other relief that the Court deems just and proper.

23 **FOURTH CAUSE OF ACTION**

24 **Knowing and/or Willful Violations of the Telephone Consumer Protection**

25 **Act**

26 **47 U.S.C. §227(c)**

27 • As a result of Defendant's willful and/or knowing violations of 47  
28 U.S.C. §227(c)(5), Plaintiff and the DNC Class members are entitled

1 to and request treble damages, as provided by statute, up to \$1,500,  
2 for each and every violation, pursuant to *47 U.S.C. §227(c)(5)*.  
3 • Any and all other relief that the Court deems just and proper.

4 53. Pursuant to the Seventh Amendment to the Constitution of the United  
5 States of America, Plaintiff is entitled to, and demands, a trial by jury.  
6  
7

8 Respectfully Submitted this 7th Day of May, 2018.  
9  
10 LAW OFFICES OF TODD M. FRIEDMAN, P.C.  
11  
12 By: /s/ Todd M. Friedman  
13 Todd M. Friedman  
14 Law Offices of Todd M. Friedman  
15 Attorney for Plaintiff  
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